IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUEDAY, THE 24thDAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

And
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 13578 of 2004

Between:

K.V.S.K. Bhagawan Das, S/o. Subbaiah,
Handlooms & Textiles, Kakinada, East Godavari District.

..... PETITIONER

AND

1. The Government of Andhra Pradesh, rep. by its Secretary,
Industries & Commerce (Tax) Department, Secretariat Buildings, Hyderabad.
2. The Commissioner and Director of Handlooms and Textiles and
Development Commissioner for Apparel Export Parks, A.P. Hyderbad.
3 A. Satyanarayana, S/o. Chinna Dalenna,
Handlooms & Textiles, Vizianagaram.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari by calling for the records pertaining to the order dated 28-7-2004 in O.A.No. 4150/2004 on the file of Andhra Pradesh Administrative Tribunal, Hyderabad, and set aside the same.

Counsel for the Petitioner: MR.A.SURYANARAYANA MURTHY

Counsel for the Respondent Nos.1 & 2: GP FOR INDUSTRIES & COMMERCE

Counsel for the Respondent No.3: Mr. K.R. Srinivas

The Court made the following:

: ORDER:

(Per: The Hon'ble Mr. Justice Goda Raghuram,J)

Heard Mr. A. Suryanarayana Murthy, learned counsel for the petitioner, learned Government Pleader for Industries and Commerce for 1st and 2nd respondents and Mr. K.R. Srinivas, learned counsel for the Caveator, 3rd respondent. At the stage of admission, the writ petition itself is taken up for disposal, as the issues fall within a narrow locus.

The 3rd respondent filed O.A.No. 4150 of 2004 (for short 'O.A.') before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') challenging the order of the State Government in G.O.Rt.No.432, Industries and Commerce (Tex) Department dated 20-07-2004 (for short 'the G.O.Rt.No.432'). By the G.O.Rt.No. 432, the petitioner herein, an Assistant Director, Handlooms and Textiles, was transferred from Vijayanagaram to Kakinada, while transferring the 3rd respondent also an Assistant director, from Kakinada to Vijayanagaram. By an order dated 28-07-2004, the Tribunal suspended the operation of G.O.Rt.No. 432, while directing the official respondents to continue the 3rd respondent at Kakinada. Aggrieved by the said interim order, the writ petition is filed.

In the O.A., the applicant – 3rd respondent herein – contended that the petitioner herein was working as an Assistant Director, Kakinada for more than five years previously and he was posted at Kakinada on 20-07-2004. Within four and half months of his posting at Kakinada, he was transferred to Vijayanagaram by the G.O.Rt.No. 432 to accommodate the writ petitioner. He alleged that the transfer was on the basis of political interference in favour of the writ petitioner. The 3rd respondent pleaded in the O.A. that the 2nd respondent had submitted proposals dated 23-06-2004 for transferring the 3rd respondent from Kakinada hardly within

two months of his posting there, that the Government order transferring him was not issued during the general transfer period, but as a special case on the basis of the request of the writ petitioner and only to illegally accommodate the writ petitioner.

From the order of the Tribunal impugned herein, it appears that when the O.A. was listed for admission on 23-07-2004, the Tribunal called upon the learned Government Pleader to obtain instructions and to produce the relevant file pertaining to G.O.Rt.No. 432. The file was perused by the Tribunal on 28-07-2004. On a perusal of the file, the Tribunal was satisfied that the Minister for Animal Husbandry and Dairy Development, Government of Andhra Pradesh had addressed letters dated 05-06-2004 and 21-06-2004 and the M.L.A., of Rajole Constituency addressed another letter espousing the cause of the writ petitioner for his transfer from Vijayanagaram to Kakinada. In view of this material on record, the Tribunal, *prima facie*, came to the conclusion that the transfer of the 3rd respondent from Kakinada to Vijayanagaram and the writ petitioner from Vijayanagaram to Kakinada was not on the basis of normal administrative considerations, but was founded on extraneous circumstances. Accordingly, the order of the Government in G.O.Rt.No. 432 was suspended, while directing that the 3rd respondent be continued at Kakinada. The Tribunal did record the submission of the writ petitioner that he had assumed charge at Kakinada pursuant to the Government order in G.O.Rt.No. 432 and that, therefore, no interference with the order was called for. Further submission of the writ petitioner that in view of the decisions of the Supreme Court, transfer being an incidence of service, should not normally be interfered with, was also duly taken note of. Nevertheless, the Tribunal was satisfied on the basis of the material in the file pertaining to the G.O.Rt.No. 432 that as the transfer order was issued in circumstances other than legitimate administrative concerns, the order called for interdiction.

Mr. A. Suryanarayana Murthy, learned counsel for the petitioner submitted that during the petitioner's tenure as the Assistant Development Officer and as Assistant Director, he had taken up various developmental activities for the up-liftment of the members of weavers community and for formation of weavers' societies and had also ensured that no members of the weavers community committed suicide within his jurisdiction. On the basis of the good work done by him, it may be that members of the weavers' community might have represented to the local Minister, other leaders and the higher officials, that he be transferred back to Kakinada. If based on

such requests, he was transferred back from Vijayanagaram to Kakinada, there is no cause for interference. On behalf of the petitioner, the observations of the Supreme Court in *PUBLIC SERVICES TRIBUNAL, BAR ASSN., Vs. STATE OF U.P.* ([1]), were also brought to the notice of the Tribunal, that transfer is a normal incident of service and no interim interference is called for in matters of transfer. Another grievance of the writ petitioner is that all his contentions before the Tribunal are not fully reflected in the judgment.

An order of transfer of a Government servant is an administrative order and is subject to judicial scrutiny on the same parameters as any other administrative order. Having regard to the fact that the working of Government departments is a complex exercise and does involve transfer of Government employees from one place to another in the exigencies of administration, courts normally do not interfere with an order of transfer, including on grounds that a transfer has been made contrary to administrative instructions prohibiting transfers very frequently or within a particular time. However, the normal deference that is accorded to administrative choices underlying transfers is not based on any principle of 'inviolability' of orders of transfer. Where an order of transfer is vitiated on account of colourable exercise of power or is founded on extraneous reasons or is made to accommodate another Government employee at a particular place without any redeeming public interest component, an order of transfer is as much subject to judicial scrutiny and interdiction as any other administrative order. An order of transfer, in this sense, does not enjoy any immunity from judicial scrutiny. The ratio in the judgment of the Supreme Court supra does not enunciate a principle that in no circumstance could an order of transfer be interfered with by the Courts, including by way of interim orders. The Supreme Court merely reiterated the well established principle that interim orders should not casually be granted in the matters of transfer. In fact, in paragraph No.37 of the judgment of the Supreme Court supra, the principle is stated thus:

> *"37. Transfer is an incident of service and is made in administrative exigencies. Normally it is not to be interfered with by the courts. This Court consistently has been taking a view that orders of transfer should not be interfered with except in rare cases where the transfer has been made in a vindictive manner."*

The order of the Tribunal, impugned herein, is an ad-interim order issued on a *prima facie* satisfaction arrived at by the Tribunal on the basis of a perusal of the file relating to the G.O.Rt.No. 432 and on a satisfaction recorded that it appeared that the order of transfer was issued for considerations other than rational administrative concerns. We find no warrant for interference with the discretion exercised by the Tribunal. As the O.A.No.4150 of 2004 is pending before the Tribunal, the petitioner herein is at liberty to urge all his contentions, at the hearing of the O.A. Since the O.A. is directed against an order of transfer, which has been suspended by the order impugned herein, we direct the learned Tribunal to consider and dispose of O.A.No. 4150 of 2004 itself expeditiously and in any case within a period of three (3) months from the date of receipt of a copy of this order.

On the analysis above, the order dated 28-07-2004 in O.A.No.4150 of 2004 of the Tribunal does not, however, call for interference. The writ petition is, accordingly, dismissed. No costs.

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J. CHELAMESWAR, J

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GODA RAGHURAM, J

Dt. -08-2004

Pvks/*

To

1 The Secretary, Industries & Commerce (Tax) Department, the Government of Andhra Pradesh, Secretariat Buildings, Hyderabad.
2 The Commissioner and Director of Handlooms and Textiles and Development Commissioner for Apparel Export Parks, A.P. Hyderbad.
3 A. Satyanarayana, S/o. Chinna Dalenna,
Handlooms & Textiles, Vizianagaram.

4.2CCs to the Government Pleader for Industries and Commerce, A.P. High Court Buildings, Hyderabad (OPUC).

5. The Registrar, Andhra Pradesh Administrative Tribunal, Hyderabad.

5.2CD copies